



455039

Resp. #9

STATE OF INDIANA



INDIANAPOLIS, 46225

DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

105 South Meridian Street

STATE OF INDIANA)
)
COUNTY OF MARION)

SS:

BEFORE THE INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENTGARY DEVELOPMENT
COMPANY, INC.,

Petitioner,

vs.

Cause No. N-146

INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
OF THE ADMINISTRATIVE LAW JUDGEFindings of Fact

1. The Environmental Management Board of the State of Indiana (Board) was an agency of the State of Indiana, duly empowered to hold administrative hearings and to enter an order directing the taking of such action as may be required under the circumstances. The Indiana Solid Waste Management Board is the successor agency to the Environmental Management Board for rendering final determinations.

2. The Board has jurisdiction over the subject matter and parties to this action.

3. In early 1972, Petitioner began to explore developing a sanitary landfill in a mined-out, water-filled sand pit in Gary, Indiana (hereafter called the "site"). On May 15, 1973, the Indiana Stream Pollution Control Board (SPCB) approved Petitioner's proposal to dewater the sand pit. On June 19, 1973, SPCB granted Petitioner Construction Permit SW 133, thereby allowing preparatory construction work for a sanitary landfill to begin.

4. On August 29, 1974, the State conducted its final inspection of the site which led to SPCB's granting final approval to Petitioner to commence sanitary landfill operations. The landfill began accepting solid waste for disposal in September 1974. On February 20, 1975, SPCB sent Petitioner its Operating Permit No. 45-2.

5. On May 29, 1980, SPCB approved an Agreed Order negotiated between Petitioner and SPCB staff. This Order required that Petitioner submit, within one hundred eighty (180) days of May 20, 1980, an application for a modification of its original construction permit. This application was timely submitted to SPCB on November 14, 1980.

6. On February 16, 1982, the Indiana Environmental Management Board ("EMB"), the successor agency responsible for landfill permits, notified Petitioner by two nearly identical letters (hereafter called the "February 16, 1982, letter") that its Operating Permit No. 45-2 had been renewed and that its revised construction plans submitted November 14, 1980, had been approved, both subject to nine (9) conditions. Petitioner timely filed a petition for hearing contesting the imposition of these nine conditions.

7. On February 18, 1983, the "EMB" approved a Settlement Agreement and Order in Cause No. N-53, settling the appeal filed by Gary Development contesting the imposition of nine (9) conditions imposed by the Board on February 16, 1982, in the renewal of its Operating Permit No. 45-2 and the approval of its construction plan.

8. On January 3, 1984, the Technical Secretary of the "EMB" revoked four (4) special permission letters previously issued by the Board for the disposal of "special waste" at Petitioner's landfill.

9. On January 23, 1984, Petitioner timely appealed the revocation of the special permission letters.

10. Notice of Hearing was issued on the tenth day of April, 1984. Notice of time and place of hearing was given as provided by law, by mailing, via certified mail, notice of hearing to all parties herein.

11. A formal administrative hearing, pursuant to I.C. 13-7 and I.C. 4-22-1, was held on August 29, 1984, and September 10 and 11, 1984. Appearing for the Petitioner was Warren D. Krebs, Attorney at Law. Appearing for the Respondent was Mathew S. Scherschel, Deputy Attorney General.

12. On April 1, 1985, the Hearing Officer issued his Findings of Fact, Conclusions of Law and Recommended Order, and a notice of their filing was mailed to Petitioner by the Board's Technical Secretary on April 9, 1985.

13. On April 29, 1985, Petitioner timely filed its Objections to and Appeal from the Findings of Fact, Conclusions of Law and Recommended Order contesting Conclusions 1, 2, 3, and 4, Findings 13, 14, 15, 20, 23, 24, and 25, and portions of Findings 21 and 26.

14. On November 15, 1985, the Board held a hearing regarding the appeal and objections, and Petitioner submitted to the Board a Verified Petition to Introduce Newly Discovered Evidence.

15. On December 2, 1985, the Hearing Officer issued an order that Petitioner should submit an offer of proof consisting of any additional evidence which it intends to offer which is relevant and material to the issues herein; and Petitioner filed its Offer of Proof on December 20, 1985, with said documents. These were the same documents presented to the full Board on November 15, 1985.

16. A formal administrative hearing was again held on May 20, and June 5, 1986, after notice of hearing was provided the parties. Appearing for Petitioner was Warren D. Krebs, Attorney at Law. Appearing for the Respondent was Mathew S. Scherschel, Deputy Attorney General.

17. The February 18, 1983, Settlement Agreement reads in pertinent part as follows:

It is expressly agreed and understood that the provisions of this Recommended Agreed Order constitute a modification of Petitioner's modified Construction Permit SW 113 and Operating Permit No. 45-2. To the extent that this Recommended Agreed Order is inconsistent with these two permits; the drawings and narrative submitted on November 14, 1980, or the State's February 16, 1982, letter, the provisions below shall supercede such inconsistent provisions, and shall govern construction and operations at the site from the date this Recommended Agreed Order is approved by EMB. (This date is hereafter called "the effective date of this Order.")

1. Condition No. 1 in the February 16, 1982, letter, to wit: Sandy, granular material under the Unified Soil Classification SW and SP will not be used for daily cover at the site, remains unchanged.

2. Condition No. 4 in the February 16, 1982, letter is deleted and replaced by the following:

Petitioner shall notify a staff member of the Indiana Division of Land Pollution Control (hereafter called "staff") by phone at least seven (7) days in advance of the installation of any required leachate collection system on-site, to allow staff to inspect such installation.

- a. After such notification, Petitioner may install the system on the appointed day at the appointed hour, or as soon thereafter as weather permits, whether or not staff is present.
- b. If staff is not present for such installation, Petitioner shall document with photographs and narrative that the installation complies with Petitioner's amended construction permit.
- c. Any required leachate collection system shall be installed in compliance with the amended construction permit.

3. Condition No. 5 in the February 16, 1982, letter regarding the discharge of water from the site into the Grand Calumet River or other waters of the State of Indiana is deleted in its entirety.

4. Condition No. 6 in the February 16, 1982, letter is deleted and replaced by the following:

It is not necessary that Petitioner install the seepage collection pond detailed on page seven of Petitioner's Engineering Plan. Petitioner agrees that no solid waste will be deposited in "standing water"; the phrase "standing water" shall not be construed to mean de minimus amounts of water or small rain-filled puddles.

5. Condition No. 7 in the February 16, 1982, letter is deleted and replaced by the following:

The Clay Perimeter Seal along the southside of the site shall be constructed to an elevation of 589.7 MSL and shall be at least 10 feet wide. The parties expressly agree that the portion of Petitioner's landfill located at the southeastern portion of the site which is completed and at final grade as of December 14, 1982, will not be affected by this requirement.

7. The modified construction plans approved February 16, 1982, called for compaction of the clay perimeter wall around the site and testing the clay used for constructing this wall in accordance with the 90 percent Standard Proctor Density Test. Petitioner has found it technically and economically impractical to utilize this test. Respondent has agreed to substitute for this test any test acceptable to staff which will accurately portray the permeability of the clay perimeter wall. Accordingly, Conditions 2 and 3 of the February 16, 1982, letter are deleted and replaced with the following:

- a. Within forty-five (45) days of the effective date of this Order, or if weather conditions prevent taking the borings within this time period, as soon thereafter as weather permits, Petitioner will have four soil borings (which may be drilled at an angle) taken from the site's west wall, at samples taken at five foot depth intervals in each boring. Blowcounts will be recorded for each split spoon sample taken. The soil boring team will visually inspect the split spoon samples taken from each hole drilled and keep a log of their observations to include any identifiable irregularities or voids encountered during drilling. A total of five Shelby tube samples shall be taken from the borings. The Shelby tube samples will be subjected to a hydraulic conductivity test to ascertain the samples' permeability. Test results will be forwarded to staff within fifteen (15) days of their receipt by Petitioner. Staff shall be notified at least seven (7) days in advance of any such boring, and will be given an opportunity to attend and view the drilling. Staff shall not interfere with such operations.

- b. If the test results show the permeability of the clay wall to be 5.0×10^{-6} centimeters per second or less (i.e., 4.9×10^{-6} , 4.0×10^{-6} , 3.0×10^{-6} , 2.0×10^{-6} , 1.0×10^{-6} , 1.0×10^{-7} , 1.0×10^{-8} , etc.), then no remedial action for the west clay perimeter wall will be required unless staff identifies a significant infiltration of liquid as discussed in subparagraph 7c.
- c. If the test results show that the permeability of the west perimeter wall is 5.1×10^{-6} centimeters per second or greater (i.e., 5.1×10^{-6} , 6.0×10^{-6} , 7.0×10^{-6} , 8.0×10^{-6} , 9.0×10^{-6} , 1.0×10^{-5} , 1.0×10^{-4} , etc.), or if staff identifies a significant infiltration problem involving a concentrated infiltration problem involving a concentrated flow of liquid into the site through the west wall or emanating from an area of deposited solid waste along that wall, then it is agreed that further negotiations between the parties will be required to determine what remedial actions, if any, must be undertaken along the west wall. If the parties are unable to reach an agreement as to such remedial measures, if any, within sixty (60) days of (i) the submission of the test results to the State, or (ii) the date a significant infiltration of liquid, staff notifies Petitioner in writing of a finding of the issue of what remedial action may be required shall be submitted to the Hearing Officer for hearing and decision.
- d. Until the soil boring tests are completed with satisfactory results in accordance with subparagraphs "a" and "b" above, or until an agreement is approved, or order entered pursuant to subparagraph "c" above, Petitioner agrees not to construct any further portions of the clay perimeter wall around the site.
 - i. If said test results are satisfactory in accordance with subparagraph 7b, and no significant infiltration of liquid is identified in accordance with subparagraph 7c, then construction of the remaining portions of the clay perimeter wall shall proceed in the same manner as the construction of the west wall so as to ensure a permeability factor at least equivalent to the test results for the west wall and to ensure that infiltration of liquid into the site through these newly constructed walls does not occur. In this event, Petitioner will submit narrative to staff describing the method used to construct the west wall and remaining portions of the clay perimeter wall with pictures and narrative to ensure consistent construction practices.
 - ii. If said test results are unsatisfactory, or a significant infiltration of liquid is identified in accordance with subparagraph 7c, the parties will attempt to negotiate an acceptable alternative for the construction of the remaining portions of the clay perimeter wall, or failing an agreement, submit the matter to the Hearing Officer for hearing and decision.

8. Condition No. 9 of the February 16, 1982, letter is deleted and replaced by the following:

- a. Petitioner's landfill will not be excluded from consideration as, and will be considered, one of the several sanitary landfills in Indiana which are satisfactory repositories for special or "hazardous waste" as defined in 320 IAC 5-2-1(19) (1982 Cum. Supp.) (hereafter called "special waste"). The parties specifically agree that no "hazardous waste" as defined and identified 320 IAC 4-3 (1982 Cum. Supp.) (hereafter called "RCRA Hazardous waste") shall be deposited at Petitioner's landfill after the effective date of this Order.
- b. Petitioner shall be permitted to continue receiving the following "special wastes" from the effective date of this Order until further action of the Board or staff:
 - i. U.S. Reduction Dust;
 - ii. Asbestos fill from Borg-Warner and Amoco Oil (which waste streams were subject to Special Permission letters dated May 17, 1977, and May 14, 1980, respectively);
 - iii. Corn starch and carbon filters from American Maize Products Company (which waste streams were subject to a Special Permission letter dated February 20, 1976);
 - iv. The following steel mill sludges from J & L Steel Corporation: the central treatment plant sludge, the terminal treatment plant sludge, and the sludge from the 6 Stand Oil Recovery Unit.
- c. After the effective date of this Order, staff will send a letter to the generators of the special wastes listed in subparagraph b above, information regarding the nature of the waste streams identified in subparagraph 8b above, to staff within sixty (60) days of receipt of such letter; it is expressly agreed that this sixty (60) day period will be extended by staff for good cause shown. Staff will analyze such updated information, make a final determination whether these listed special wastes may continue to be disposed of at the site, and shall promptly notify the generator of the waste and Petitioner of its decision. Any such decision shall constitute a "final action" for which Petitioner may file a Petition for hearing before the Board pursuant to IC 4-22-1 (1982) and IC 13-7-11-3 (1982). Any special permission letters issued for these listed wastes shall last one year. Renewal of such letters will be granted if the materials do not change significantly in quality or quantity, and if Petitioner's operation of the site is in compliance with this Agreed Order, and Petitioner's modified construction permit and operating permit.

- d. It is the party's intention that other "special wastes" of similar quality, quantity, and composition as, and other "special wastes" presenting similar environmental hazards as, the above-listed special wastes will be considered for disposal at the site. The decision whether to allow "special wastes" in addition to those listed above to be deposited at Petitioner's site, must be made by staff on a case-by-case basis after considering the physical and chemical composition of the proposed waste as well as current operations at the site. Although it is impossible to make any guarantees in advance, staff agrees in principle that, given satisfactory operations and construction at the site in compliance with this Order, Operating Permit No. 45-2, and the modified construction plans approved February 16, 1982, waste streams with similar chemical and physical composition, and waste streams presenting similar environmental hazards as the special wastes listed in subparagraph "b" above, will be considered suitable for disposal at the site.
- e. The parties agree that materials such as debris, wood, construction refuse, steel, etc., "coal ash," including fly ash and bottom ash (ie., the resultant "ash" from coal burning), may be disposed of at the site without any special permission letters.
- f. Petitioner agrees to submit a quarterly report to staff setting forth the types and amounts of "special wastes" disposed of at the site. These reports will be due the same day for the same period as the monitoring well reports referred to in paragraph 6 above.
- g. Finally, the parties agree to cooperate in good faith in exploring the possibility of depositing the Georgia Pacific paper sludges and municipal treatment plant sludges at the site.

18. The effective date of the previous Agreed Order herein was March 1, 1983. Any inspections conducted by the Respondent prior to that date could not have been considered by the Respondent in determining whether the Petitioner had violated the terms of the Agreed Order.

19. The Respondent inspected Petitioner's landfill four times between the time that the previous Agreed Order became effective (March 1, 1983) and the date that the special waste permissions were revoked on January 3, 1984. The Respondent could not have considered any event occurring after January 3, 1984, as a basis for the revocations.

20. Respondent's employee, Mr. Stuart Miller, inspected Petitioner's site on April 6, 1983. Mr. Miller noted that refuse was placed in standing water at that time. The site was found to be unacceptable.

21. The standing water was not a de minimus amount or a small puddle.

22. Petitioner's site was flooded by the Grand Calumet River on July 5, 1983.

23. Mr. Miller again inspected Petitioner's site on July 11, 1983. The site was found to be acceptable.

24. Mr. Miller again inspected Petitioner's site on August 25, 1983. Mr. Miller found that areas around the then current working area did not have adequate cover, and that foundry sand was being used as cover. The site was found to be unacceptable.

25. Foundry sand is a solid waste, and is also a sandy, granular material under the Unified Soil Classification SW or SP. Because a solid waste must be covered itself, foundry sand may not be used as cover.

26. Mr. Miller again inspected Petitioner's site on October 13, 1983. Mr. Miller found that previously worked areas did not have adequate cover and that the Petitioner had used foundry sand as cover. The site was found to be unacceptable.

27. Both of these inspections were marked unacceptable due to daily cover. Petitioner was not able to purchase and reassemble at its site a large replacement cable crane for digging of clay materials nor to dewater its site until late September and early October, 1983.

28. As of January 3, 1984, the Petitioner had not taken soil borings from the site's west wall, as required by paragraph seven (7) of the Agreed Order.

29. On July 5, 1983, there was heavy rainfall in the area of Petitioner's site, and the site flooded. The flooded water, with the exception of an area adjoining the site's west wall, was removed prior to August of 1983.

30. The standing water adjacent to the site's west wall is apparently a permanent condition, which to some extent has prevented the taking of soil borings from the west wall.

31. The leachate collection system had not been installed, and no notification of its installation was made as required by paragraph two of the Agreed Order.

32. A drainage swale on the west portion of Petitioner's site, required by the construction plans, was never built.

33. A siltation ponding area with a coarse filter outlet, required by the construction plans, was never constructed.

34. In issuing the revocation letter for American Maize Products, Respondent determined that the cornstarch carbon filters, which were the subject of the original special permission letter, were not "special waste" and that no special permission was required to dispose of that waste stream.

35. The special wastes generated by United States Steel, J & S Steel sludge or asbestos fill from Borg-Warner, and Amoco Oil Company had not changed significantly in quality or quantity between February 18, 1983, and January 3, 1984.

DISCUSSION

The following Findings of Fact relate to the period of time subsequent to January 3, 1984. They could not have been considered by the Respondent in issuing the revocation letter of that date. As the sole issue presented in this action is the propriety of the issuance of that specific revocation, events occurring subsequent to that date are clearly irrelevant to a review of that particular decision. However, the remand of this action was clearly occasioned as a result of Petitioner's Verified Petition to Introduce Newly Discovered Evidence. The motion adopted by the "EMB" required the taking of "additional and appropriate evidence in regard to this matter," but did not specify the issues that the "additional or appropriate evidence" should relate to in any way. For that reason, the following Findings of Fact are presented to clarify for the reviewing authority events occurring after the decision of January 3, 1984.

SUPPLEMENTAL FINDINGS OF FACT

1. ISBH staff conducted only three inspections between the revocation letters and the first evidentiary hearings on August 29 and September 10 and 11, 1984. All three were rated acceptable, including the inspection occurring 13 days after the revocation letters.

2. ISBH staff conducted twenty-one inspections between the period of September, 1984 and November 15, 1985. Eighteen of those inspections resulted in an acceptable rating.

3. Subsequent to the Board's hearing on November 15, 1985, Respondent's staff has inspected Petitioner's facility on seven occasions and has rated five of these as unacceptable. All of these 1986 unacceptable inspection reports were marked unacceptable due to alleged "deviations from approved plans" or "daily cover" inadequacies relating either to using a cover blend of clay and foundry sand or to the stockpiling of foundry sand, shredded wood material and wooden pallets on site.

4. Petitioner has had ATEC and Associates take four soil borings from the site's west wall and has submitted to the Respondent in November, 1985, permeability test results of a sample from each of said four borings. Petitioner did not submit a total of five permeability test results as set forth in paragraph 7 of the Agreed Order. Neither Petitioner nor Respondent knew which of the four borings would be sampled twice for permeability. Respondent agrees that the permeability values for the four samples are acceptable, and these values result in the landfill's west wall being 9 to 18 times less permeable than the standard set forth in the Agreed Order. Obtaining the borings along the landfill's west wall was delayed by the continuous standing of water and/or ice above and adjacent to this area after the execution of the Agreed Order, which resulted due to the increase in elevation of another company's property adjacent to the facility's west wall.

5. Respondent has constructed a clay perimeter seal along its south side to an elevation of at least 589.7 MSL.

6. The approved construction plans for the site included a siltation pond and coarse filter outlet, which were never constructed. Petitioner argues that the pond and filter are no longer necessary because the site no longer has a large water infiltration nor requires daily pumping as it did prior to the submission of the 1980 plans. There is no evidence to indicate that Petitioner has ever applied for or received an amended Construction Permit regarding these two items. Absent such application and approval, it is beyond the scope of this hearing to determine the propriety of deleting those requirements of the Construction Permit and no finding is made as to the continued need for those items.

7. The approved construction plans for the site included a drainage swale on the west side of the west wall of the site. This swale was never constructed. Petitioner argues that the drainage swale set forth on the modified construction plan submitted in 1980 was to control run-off flowing off the facility's west slope and channel it to the river, but is no longer necessary or beneficial in its planned location approximately two feet higher than the ponded water existing between the facility's west wall and neighboring property of Vulcan Materials. There is no evidence that Petitioner ever applied for or received an amended Construction Permit regarding this item. Absent such application and approval, it is beyond the scope of this hearing to determine the propriety of deleting the requirement of the Construction Permit and no finding is made as to the continuing need for such item.

8. The approved construction plans for the site included leachate collection pipes, which were never installed. There is no evidence that Petitioner ever applied for or received an amended Construction Permit regarding these items. Absent such application and approval, it is beyond the scope of this hearing to determine the propriety of deleting a requirement of the Construction Permit and no finding is made as to the continuing need for such items.

CONCLUSIONS OF LAW

As of January 3, 1984:

1. The Petitioner was not in compliance with the Agreed Order of February 18, 1983.

2. The Petitioner was not in compliance with its construction permit, as amended February 18, 1983.

3. The Petitioner was not in compliance with its operating permit as amended February 18, 1983.

4. Petitioner was not in compliance with operating standards on three (3) of the four (4) inspections conducted between issuance of the Agreed Order on February 18, 1983, and issuance of the four (4) denial letters on January 3, 1984.

RECOMMENDED ORDER

1. That the issuance of the four denial letters on January 3, 1984, is affirmed.

Dated at Indianapolis, this 30 day of September, 1986.



JAMES M. GARRETTSON
PRESIDING OFFICER

STATE OF INDIANA



INDIANAPOLIS, 46225

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

105 South Meridian Street

October 6, 1986

CERTIFIED MAIL

STATE OF INDIANA)
COUNTY OF MARION)

SS:

BEFORE THE DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF GARY)
DEVELOPMENT, INC.)
Petitioner)

CAUSE NO. N-146

vs.)

INDIANA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT)
Respondent)

NOTICE OF FILING OF RECOMMENDED FINDINGS OF FACT/CONCLUSIONS OF LAW AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

TO: Warren D. Krebs, Esq.
121 Monument Circle, Suite 500
Indianapolis, Indiana 46204

You are hereby notified that on the 29th day of September, 1986, I, as Presiding Officer in the above cause, have presented to and have filed with the Technical Secretary of the Solid Waste Management Board the complete record of the proceedings heretofore held before me on the above cause including Findings of Fact and Conclusions of Law, other than the transcript of the oral testimony, together with my Recommended Order.

A copy of said Findings of Fact and Conclusions of Law and Recommended Order is enclosed and made a part of this notice.

You are further notified, as provided of IC 4-22-1 that any interested and affected person may, with ten (10) days after receipt of notice file with the Technical Secretary of the Solid Waste Management Board, 5th Floor, Department of Environmental Management, 105 South Meridian Street, Indianapolis, Indiana 46225, objections to the entry of such Order.

Copies of such objections shall also be filed with the Presiding Officer and with all other parties or counsel of record.

If objections are filed, responsive pleadings shall be filed by all other parties within ten (10) days of receipt of objections, with copies to the Presiding Officer and with all other parties or counsel of record.

Warren D. Krebs, Esq.

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Dated at Indianapolis, Indiana, this 30 day of
September, 1986.

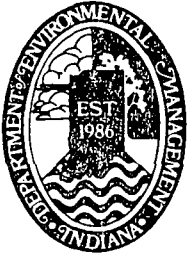


James M. Garrettson
Presiding Officer

Enclosure

cc: Mathew S. Scherschel
Deputy Attorney General

Resp. #9



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

NANCY A. MALOLEY, Commissioner

105 South Meridian Street
P.O. Box 6015
Indianapolis 46206-6015
Telephone 317-232-8603

STATE OF INDIANA)
COUNTY OF MARION) SS: BEFORE THE INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT
CAUSE NO. N-146

C E R T I F I C A T I O N

I hereby certify that this is a true and accurate copy
of the NOTICE OF FILING OF RECOMMENDED FINDINGS OF FACT/
CONCLUSIONS OF LAW AND ORDER OF THE ADMINISTRATIVE LAW JUDGE,
in the matter of Gary Development, Inc., Cause No. N-146,
which were filed with the Technical Secretary of the Solid
Waste Management Board, Indiana Department of Environmental
Management, on September 29, 1986.

James M. Garrettson
Administrative Law Judge
Indiana Department of
Environmental Management

Subscribed and sworn to before me, a notary public, in and for
said County and State, this 10th day of September, 1987.

Notary Public

My Commission Expires: 5-14-88

